IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERABAD

(SPECIAL ORIGINAL JURISDICTION)

Tuesday, the Twenty sixth day of October, two thousand and four

Present:

THE HON'BLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION Nos. 8520/2004 AND 10471/2004

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WRIT PETITION No. 8520 OF 2004

Between:

K.Masaiah s/o late K.Balappa, aged 45 years, occ: Helper in APSRTC., E.No.0099151, Mahaboobnagar Depot, Mahaboobnagar District.

…Petitioner

And

1. The APSRTC., represented by its Vice Chairman and Managing Director, Musheerabad, Hyderabad.
2. The Depot Manager, APSRTC., Mahaboobnagar Depot, Mahaboobnagar District.

…Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ or direction or more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in making deductions under the item of RBS-HBA illegal and arbitrary and consequently direct the respondents not to make any deductions in salary of the petitioner and to reimburse the deductions made so far.

For the Petitioner: Mr.B.H.R.Choudary, Advocate

For the Respondents: Mr. P.Vinayaka Swamy, and

Mr. K.Harinath, SC., for APSRTC.

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WRIT PETITION No. 10471 OF 2004

Between:

1. M.Srinivasa Reddy S/o Koti Reddy, aged about 39 years,
2. M.Nissar Ahamed S/o Ismail, aged about 40 years,
3. B.Yesebu S/o B.Benjemon, aged about 42 years,
4. M.L.Deva Raju, S/o Raju, aged about 45 years.

(All the petitioners are C/o 4th petitioner, R/o Netaji Nagar, Old Bus Stand, Atmakur (P) & (M), Kurnool Dist.

...Petitioners

And

1. A.P.State Road Transport Corporation, Hyderabad, represented by its Vice Chairman and Managing Director, Musheerabad, Hyderabad.
2. APSRTC Employees Thrift & Credit Co-operative Society Limited, Asamabad, Hyderabad, rep. by its Secretary.
3. A.P.State Road Transport Cporation, Atmakur Bus Depot, Kurnool District, rep.by its Depot Manager.
4. A.P.State Road Transport Corporation, Tenali Bus Depot, Guntur District, rep.by its Depot Manager.

...Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate writ or writs, order or direction, declaring the action of the respondents in recovering the outstanding amount due by Sri A.Naga Raju, from the petitioners herein, towards his Long Term Loan dt. 9-2-1998 on the file of the 2nd respondent as wholly illegal, arbitrary and violative of Principles of natural justice and consequently direct

the respondents herein not to recover from the petitioners long term loan availed by Sri A.Naga Raju, E.no.403365 (Helper).

For the Petitioner: Mr.G.Ravi Mohan, Advocate

For the Respondents: Mr. V.T.M.Prasad and

Mr.A.K.Jayaprkash, SC., for APSRTC.

The Court made the following :

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COMMON ORDER:

Heard the learned counsel appearing for both the parties.

Similar question involved in both the Writ petitions, as such they can be disposed of by a common order.

The petitioners question the action of the respondents in recovery of the outstanding amount due and payable by the borrowers as well as the guarantors towards long term loan under House Building Advance in different agreements entered into by them with the Andhra Pradesh State Road Transport Corporation (APSRTC) Employees Thrift and Credit Co-operative Society Limited. The petitioners are not disputing the amount due and payable by the borrowers and the fact of their giving surety for payment of installments payable by the borrowers.

It is stated by the learned counsel for the petitioners that without issuing any notice and without giving any opportunity before taking any recourse of recovery of the instalments of loan amount from the original borrowers, the action of the respondents in proceeding against the guarantors is illegal and unsustainable.

On the other hand, the learned counsel appearing for the respondents submits that certain employees of APSRTC., have taken different kinds of loans for the purpose of marriage, house construction etc., and the petitioners have signed the agreement giving surety for recovery of the said amount and it is not open for the petitioners to question the recovery sought to be made by the Society. It is further stated that in fact before recovery of the said amount, as per the terms of the agreement, notices have been issued, calling up on them for repayment of the long term loan amount and as they have failed to pay the said loan amount, recoveries are made at the instance of the Society as per the terms of the agreement alone. It is further stated that as per the agreement, the petitioners are jointly and severally guaranteed for repayment of the loan amount with interest in monthly instalments and they have also guaranteed the payment of all the monthly instalments and all

monies due as and when they become due and payable to the Credit Society.

Admittedly, the borrowers and guarantors are liable to pay the loan amount advanced to the borrower. No doubt, it is the primary duty of the borrower to pay the loan amount from the salaries and other amounts to the Credit Society, but in the event of the failure of payment of instalments by the borrower and if the amount is insufficient to recover the instalments from the original borrower, the guarantors are jointly and severally liable to pay the same and therefore, there cannot be any illegality in recovery of the said amount. It is further stated that no legal rights of the petitioners have been infringed and therefore, the Writ Petitions are not maintainable.

It is also brought to my notice that against the interim order passed by this Court, staying the recovery of loan amount, the APSRTC., Employees Thrift and Credit Co-operative Society Limited filed Writ Appeal No.427 of 2002, which was allowed by the Division Bench of this Court on 17-9-2003, holding that the Co-operative Credit Society is entitled to continue the recoveries from the salaries of the guarantors/sureties as admittedly they stood as guarantors for repayment of the loan obtained by the borrowers and therefore, it is not appropriate for this Court to interfere and stop the recoveries depriving the legitimate rights of the Society in proceeding against the petitioners/guarantors for recovery of the instalments payable by the borrowers.

Admittedly, the APSRTC., Employees Thrift and Credit Society is registered with the Registrar of Co-operative Societies. The Society has been registered for the benefit of the employees of APSRTC. The functions of the Society is independent from that of the APSRTC. None of the functions of the Credit Society are statutory and it is having its own bye laws and regulations. As the borrowers gave consent, authorizing the Society to recover the loan amount in instalments due from the borrowers from their salaries, either from them or from the APSRTC., the said recoveries have been made at

the instance of the Society as per the agreement. The relevant Clause of the agreement entered by the petitioners is extracted as follows:-

> **"In the event of the salary payable to the borrower is insufficient to cover the instalments amount or the Society is unable to recover the monthly instalments or instalments from the monthly salary of the borrower we, the sureties hereby consent and authorize the Society to recover the amount of the instalment due from the borrower from our salaries or other monies due to us from the Andhra Pradesh State Road Transport Corporation and also from the Society.**
>
> **The sureties hereby agree to abide by the Byelaws of the Society now in force and which be amended hereafter and the Resolutions passed by the Committee of Management and the General Body from time to time regarding the rate of interest and recovery thereof from members".**

Therefore, I am of the opinion that no legal rights of the petitioners have been infringed in recovery of the loan amount by the Society. However, I have taken a view that no writ lies against the action of the Society by its employees or members, as they are having alternative remedies under the Co-operative Societies Act itself. The petitioners cannot question the terms of the agreement entered into by them with the Thrift Co-operative Credit Society. The Society is only seeking to recover the instalments of loan amount payable by the borrowers as guaranteed by the petitioners, authorizing the Society to recover the loan amount from their salaries or from the APSRTC. Therefore, the Writ Petitions are devoid of merits.

Accordingly, both the Writ Petitions are dismissed. No order as to costs.

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V.ESWARAIAH, J

Date: 26-10-2004.

Shr.

Asst. Registrar.

Copies to:-

1. The Vice Chairman and Managing Director, A.P. State Road Transport Corporation, Hyderabad, Musheerabad, Hyderabad.

2. The Depot Manager, A.P.State Road Transport Corporation, Mahaboobnagar Bus Depot, Mahaboobnagar District.

3. The Secretary, APSRTC Employees Thrift & Credit Co-operative Society Limited, Asamabad, Hyderabad.

4. The Depot Manager, A.P.State Road Transport Cporation, Atmakur Bus Depot, Kurnool District.

5. The Depot Manager, A.P.State Road Transport Corporation, Tenali Bus Depot, Guntur District.

6. To CD copies.